IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28..02..2007

C O R A M

The Honourable Mrs. Justice PRABHA SRIDEVAN

W.P. Nos.45461 and 45462 of 2006

Tvl. Aruna Malai College of Education,
Run by the Indira Gandhi Educational
Trust, rep. by its Managing Trustee
S.S.K. Chowdry, Kumarapuram,
Melavasal Post, Mannargudi, .. Petitioner in
Tiruvarur District. W.P. 45461/2006

Kalaimahal College of Education,
Run by Sri. Kalaimahal Educational
Trust, rep. by its Managing Trustee
K. Nedunchezhian, Main Road,
Sembanarkoil, Tranquebar Taluk, .. Petitioner in
Nagapattinam District. W.P. 45462/2006

Versus

1. The Secretary to Government,
   Higher Education Department,
   Fort St. George, Chennai-9.

2. The Bharathidasan University,
   Rep. by its Registrar,
   Tiruchi-620 024.

3. The Regional Director,
   Southern Regional Committee,
   National Council of Teacher Education,
   HMT Post, Bangalore. .. Respondents in Wps

PRAYER : Writ Petitions filed under Article 226 of the Constitution of India praying to issue writs of mandamus to direct respondents 1 and 2 to grant affiliation to the petitioners-Institutes for the year 2005-2006 in view of the recognition granted by the 3rd respondent to start the

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B.Ed. Secondary Course of 1 year duration from the academic sessions 2005-2006.

For Petitioners : Mr. T.R. Rajagopalan,
Senior Counsel for
Mr. K. Soundararajan.

For Respondent-1 : Mr. Pa. Kadirvel,
Govt. Advocate.

For Respondent-2 : Mr. Subbayya for
M/s. Row & Reddy.

For Respondent-3 : Mr. S. Udayakumar,
Standing Counsel.

O R D E R

The petitioners, educational institutions, after having admitted the students before they were granted affiliation by the second respondent/University, are now before this Court pleading the plight of the students.

2. The facts in W.P. No.45461 of 2006 are stated hereunder :

The petitioner/Trust was started in the year 1996. It was granted recognition by the National Council for Teacher Education ('NCTE' in short) for running a Teachers' Training Institute. It applied to the third respondent/NCTE for recognition for conducting the B.Ed. Degree Course. The third respondent was satisfied that the petitioner had complied with the norms prescribed under the National Council for Teacher Education Act, 1993 ('NCTE Act' in short) and granted recognition for the academic year 2005-2006 vide its order dated 9.3.2006. The order was also communicated immediately to respondents 1 and 2. The petitioner thereafter approached the second respondent/University for grant of affiliation. The petitioner believed that affiliation will be granted for the academic year 2005-2006 and admitted the students. The students had attended the classes. By order dated 19.9.2006, the second respondent granted affiliation to the petitioner for the academic year 2006-2007. The petitioner, therefore, has moved this Court for a writ of mandamus to the first and second respondents for grant of affiliation for the academic year 2005-2006 in view of the recognition granted by the third respondent for the said academic year so that the students who had been admitted would be able to write their B.Ed. examinations and secure the necessary degrees.

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3. The facts in W.P. No.45462 of 2006 are stated hereunder :

The petitioner/Trust was started in the year 2004. It was granted recognition by the third respondent/NCTE for starting a Teachers' Training Institute. It applied to the third respondent for recognition for conducting the B.Ed. Degree Course. The third respondent was satisfied that the petitioner had complied with the norms prescribed under the NCTE Act and granted recognition for the academic year 2005-2006 vide its order dated 26.12.2006. The said order was also communicated immediately to respondents 1 and 2 as early as in January, 2006. Immediately after getting the order granting recognition, the petitioner admitted the students. The petitioner bona fide believed that affiliation will be granted for the academic year 2005-2006. However, by order dated 19.9.2006, the second respondent granted affiliation to the petitioner for the academic year 2006-2007. The students, who have been admitted, have attended classes for 180 days and are ready to appear for the examinations. In these circumstances, the petitioner has moved this Court for a writ of mandamus to the first and second respondents for grant of affiliation for the academic year 2005-2006 in view of the recognition granted by the third respondent for the said academic year so that the students who had been admitted would be able to write their B.Ed. examinations and secure the necessary degrees.

4. Learned senior counsel appearing for the petitioners submitted that the NCTE had granted recognition to the petitioner/institutions for conducting the B.Ed. Degree Course for the academic year 2005-2006. This was immediately communicated to the first and second respondents also. Therefore, there could have been no doubt in the mind of the second respondent regarding the grant of recognition and the second respondent cannot take advantage of the fact that the gazette notification came later. The second respondent ought to have seen that the provisions of the NCTE Act are imperative, and the University 'shall grant affiliation' once recognition is granted. Therefore, this being a mere formality, the second respondent ought not to stand on technicalities and take the gazette notification as the reference point and refuse to grant recognition for the academic year 2005-2006. Learned senior counsel also submitted that this was really not a case of retrospective affiliation, since the petitioners have made their applications in time for grant of affiliation for the academic year 2005-2006 and if only the second respondent had acted promptly, the students who had been admitted in the petitioner/institutions for the academic year 2005-2006 would not have been placed in this limbo where, though they have attended the classes for the academic year 2005-2006, their period of study would be of no avail.

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5. The learned Government Advocate appearing for the first respondent would submit that the legal position is clear that students can be admitted only after affiliation is granted and if the petitioners chose to admit students before affiliation is granted, the petitioners themselves are responsible for the plight of the students.

6. Learned counsel appearing for the second respondent submitted that the University statutes specifically prohibit retrospective affiliation and this Court has also held that such affiliation cannot be granted and therefore, the second respondent cannot be directed to do something that is contrary to law.

7. The learned counsel appearing for the third respondent would submit that the recognition comes into effect only after the gazette notification is published and therefore, the petitioners ought not to have admitted the students on receipt of the order of recognition.

8. Sub-section (4) of Section 14 of the NCTE Act reads as follows :

> "Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the official gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government."

Sub-section (6) of Section 14 reads thus :

> "Every examining body shall, on receipt of the order under sub-section (4), -
>
> (a) grant affiliation to the institution, where recognition has been granted; or
>
> (b) cancel the affiliation of the institution, where recognition has been refused."

9. In Writ Appeal No.1 of 2006 and Writ Petition No.9386 of 2005 (Manonmaniam Sundaranar University vs. Jeyakumari Thangaraj) dated 6.11.2006, a Division Bench of this Court has held, on a reading of Section 14(4) of the NCTE Act that it is clear that the order granting or refusing recognition to an institution has to be published in the official gazette and communicated in writing for appropriate action and that "in view of the language couched in sub-section (4) of Section 14 of the Act, we are of the view that after an appropriate order granting recognition by NCTE is passed, the same shall be published in the official gazette and it must also be communicated in writing to the institution concerned". Thereafter,

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the Division Bench gave certain directions, the relevant dircetion for the purpose of this case is: " on getting the order duly published in the gazette, if the petitioner satisfies all other requirements, the petitioner is free to make a request to the University for affiliation". This is relied on by the second respondent to show that they could not have acted until the order of recognition was published in the gazette.

10. In Writ Petition No.41049 of 2006 (I. Elangovan vs. Thiruvalluvar University & Others) dated 5.12.2006, V. Ramasubramanian, J. has, after considering the various decisions in this regard, had observed as follows :

> "In an ideal situation, an institution should be established first, followed next by recognition from the Central Agency and later by affiliation from the concerned University, before students are admitted. But ideal situations prevail only in ideal societies, of which ours is not one. Therefore, some allowance may have to be given and some flexibility maintained, on account of the lethargic attitude on the part of the agencies, but the same should not result in perverting the process. In today's context, students are admitted first, institutions are established later, recognition is obtained subsequently and affiliation is reserved as a last requisite, only to be used as a gate pass. The interpretation of the Acts, Statutes and Regulations, cannot aid and abet such a process of reversal of a logical flow of events."

The learned issued certain directions, which are enumerated hereunder :

> "(a) The University has no power to grant retrospective affiliation.
>
> (b) Any affiliation granted by the University shall be consistent with the requisites of Clauses 46 and 47 of Chapter XXVI of the Statutes of the University.
>
> (c) In order to ensure that an anomaly does not arise between the recognition granted by NCTE and the affiliation by the University, the University shall evolve a system by which it can work in close co-ordination with NCTE.
>
> (d) The system evolved by the University shall take care of the following broad principles:-
>
> (i) The University may impose a condition that all applications for affiliation shall be made within a week of submission of the applications for recognition to NCTE and such applications for affiliation shall quote the

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Registration Number given by NCTE.

(ii) The University shall also make it mandatory for the institutions to forward the copies of the letters of NCTE pointing out deficiencies and the replies of the institutions claiming rectification of deficiencies.

(iii) The University shall make it mandatory for the institutions to inform the date of inspection by the Team of NCTE and the University shall also depute its own Inspection Commission to coordinate with the Inspection Team of NCTE. This is to ensure that the inspections of NCTE and the University take place simultaneously or at least within short span of time.

(iv) Wherever the Inspecting Team of the University finds inadequacies, the University shall communicate the report of the Team to NCTE, to enable NCTE to take such report also into account before granting recognition for any particular academic year.

(v) Since every recognition granted by NCTE is also subject to the approval of faculty members by the affiliating University, the University shall communicate its decision regarding the approval of the faculty members to NCTE, within two weeks of taking a decision, to enable NCTE to know whether the condition incorporated under paras 3(a) and 4 of the orders of recognition are duly complied with or not. This will enable NCTE to take any action for withdrawal of recognition under Section 17(1) of NCTE Act.

(vi) If by the time the inspection is conducted both by NCTE and the University, a major portion of the academic year has also expired and the University comes to a conclusion that from that stage it may not be possible for the institution to satisfy the requirement of 150 working days and 30 days of training, as per the Norms and Standards prescribed by NCTE, the University shall also communicate the same to NCTE to ensure that they do not grant recognition in respect of that academic year, putting the University to a predicament.

(e) The steps narrated in the preceding Clause (d) are only by way of guidelines for the purpose of enabling the University to evolve a scientific system to streamline the system of education. The University shall be free to fine tune and evolve any scientific system, for the purpose of achieving coordination."

For arriving at this conclusion, the learned Judge had considered the following decisions :

(a) 2005 W.L.R. 395 [The University of Madras s. Loordhu Ammal

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Educational Trust], where a Division Bench of this Court had held that a college does not have the right to admit students even before the grant of affiliation and that it would amount to fraud on those students.

(b) W.P. Nos.8685, 8687, 8869 and 8186 of 2006 (Sree Arumugam Teacher Training College vs. Thiruvalluvar University) dated 4.4.2006, where D. Murugesan, J. had held that there cannot be any retrospective affiliation and that the attendance before affiliation would not be taken into consideration.

(c) (1986) 2 S.C.C. 667 [A.P. Christians Medical Educational Society vs. Government of A.P.], where it was held thus :

> "We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

(d) 1986 (Supp) S.C.C. 166 [N.M. Nageshwaramma vs. State of A.P.], where it was held thus :

> "We are unable to accede to these requests. These institutions were established and the students were admitted into these insitutes despite a series of press notes issued by the government. If by a fiat of the court, we direct the government to permit them to appear at the examination, we will practically be encouraging and condoning the establishment of unauthorised institutions."

(e) 1990 (Supp) S.C.C. 722 [Managing Committee of Bhagwan Budh Primary Teachers Training College vs. State of Bihar], where it was held thus :

> "What is however, unfortunate is that applications are not promptly disposed of. In fact, we are of the view that the concerned department of the Government of Bihar should see to it that applications for recognition of educational institutions are decided promptly and where such an application is without merit, the government should promptly reject the same and take steps to see to it that the rejection is brought to the attention of the students of the institution concerned so that they may not waste further time and money by undergoing training in that institution. The failure of the government to take such action would only reflect callous indifference to the interests of the young students to whom the government certainly owes certain responsibilities."

(f) (1991) 3 S.C.C. 87 [State of Tamil Nadu vs. St. Joseph Teachers Training Institute], where it was held thus:

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"Courts cannot grant relief to a party on humanitarian grounds contrary to law. Since the students of unrecognised institutions were legally not entitled to appear at the examination held by the Education Department of the government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination."

(g) A.I.R. 1998 S.C. 2235 [C.B.S.E. vs. P. Sunil Kumar], where it was held thus :

"But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken the examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of students."

12. The submission that in view of the language employed in Section 14(4) of the NCTE Act that the University "shall grant affiliation" does not leave much discretion to the University, must be rejected. In 2005 W.L.R. 403 [Loordhu Ammal Educational Trust vs. The University of Madras], it was held as follows :

"In our opinion, the word 'automatic' used in the aforesaid judgment should not be treated to mean that the Madras University must blindly grant affiliation whenever an order of recognition by NCTE under the NCTE Act, 1993 is produced before it. No doubt section 4(6) says that the examining body, on receipt of the order under sub-section (4) of section 14, shall grant affiliation to the institution where recognition has been granted. However, this does not mean that as soon as an order of recognition from the NCTE is produced before the University it must close its eyes and straightaway grant affiliation".

13. The petitioners in this case have not acted in accordance with law. Of that, there is no doubt. This itself may disentitle the petitioners from being granted any relief. But since it is the fate of the students who are in no way responsible for the acts of the petitioners, the writ petitions are not dismissed on this ground. The petitioner in W.P. No.45461 of 2006 has, even before affiliation was granted, advertised that it was affiliated with the second respondent/University. The publication in "Daily Thanthi" dated 13.2.2006 is enclosed in the typed set of papers in W.P. No.45461 of 2006. Not only has the petitioner put out an advertisement as if there had been affiliation, it had introduced

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the reference number sent by the NCTE dated 26.12.2005, which gives a false impression that NCTE has granted recognition vide an order dated 26.12.2005, whereas this petitioner, namely the petitioner in W.P. No.45461 of 2006, was granted recognition only on 9.3.2006. On seeing this advertisement, the second respondent/University has addressed a letter on 2.3.2006, objecting to the use of the word 'affiliated with Bharathidasan University', since as on that date, the petitioner had not approached the University in this regard. The petitioner was called upon to explain why legal action should not be taken against the petitioner for giving a wrong information. Immediately on 18.3.2006, the petitioner published a Corrigendum stating that by mistake in the advertisement, the words 'affiliation with Bharathidasan University' had been published. The 21.6.2006 edition of "The Hindu" carried out a report with a caption 'University Cautions B.Ed. Aspirants' and that as per clause 33 of Chapter XII of the University Statutes, affiliation, recognition or approval shall in no case be granted with retrospective effect. The students and parents were specifically warned that they should verify whether the institutions had obtained affiliation and that the University will not be held responsible for students getting admission in unaffiliated institutions. This was repeated in the tamil daily "Dina Malar" on 21.6.2006. On 7.12.2006, the petitioners applied for affiliation and also informed the second respondent that in anticipation of their affiliation, they had already admitted students for the academic year 2005-2006. This was considered at the 175th Meeting of the Syndicate held on 20.12.2006 and it was resolved that in view of the fact that there is no provision in the statutes for grant of retrospective affiliation, no such affiliation can be granted, nor the students permitted to write the examinations.

14. Chapter XII of the Bharathidasan University Statutes titled 'Affiliation, Recognition and Approval of Colleges/Institutions' deals with affiliation in cases where a new college is to be started and affiliation, recognition or approval for an existing college for starting a course or courses of study. In the present case, we are concerned with the latter situation :

> "23(b). A college applying for affiliation, recognition or approval for a course or courses of study shall send a formal letter of application to the Registrar between 1st July and 31st October preceding the academic year in which the courses are proposed to be started and shall give full information in the letter of application on matters referred to in item 23(a)(i to viii)."

Therefore, for the academic year 2005-2006, the application has to be sent between 1st July and 31st October, 2004 as per the statutes,

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but in 2006 W.L.R. 549 [Vinayaga Mission's College of Nursing and Paramedical Sciences vs. The State Nurses and Midwives' Council & Others], it has been held that application for affiliation after the date prescribed by the second respondent can also be considered for the said academic year itself. So, even a belated application cannot be rejected on that ground. However, the rules do not permit grant of retrospective affiliation.

15. Rule 33 of the Bharathidasan University Statutes reads as hereunder :

> "Affiliation, recognition or approval shall in no case be granted with retrospective effect. Attendance granted at courses of instruction provided in colleges or in subjects before affiliation, recognition or approval is given shall not qualify for the grant of certificates or attendance; and such attendance shall not entitle any candidate for exemption from the production of certificate of attendance."

16. Sections 39 and 40 of the Bharathidasan University Act, 1981 read as follows :

> "39. Admission to University examinations. - No candidate shall be admitted to any University examination unless he is enrolled as a member of a University college or laboratory or of an affiliated or approved college and has satisfied the requirements as to the attendance required under the regulations for the same or unless he is exempted from such requirements of enrolment or attendance or both by an order of the Syndicate passed on the recommendation of the Standing Committee on Academic Affairs made under the regulations prescribed. Exemptions granted under this section shall be subject to such conditions as the Syndicate may think fit.
>
> 40. Attendance qualifying for University examination. - No attendance at instruction given in any college or institution other than that conducted, affiliated or approved by the University shall qualifying for admission to any examination of the University."

Therefore, the stand of the University that it cannot grant retrospective affiliation must be accepted.

17. The petitioners cannot feign ignorance regarding the position of students who are admitted without affiliation to the second respondent-University. All that they say is that since recognition has been granted by the NCTE and the order therefor had been communicated to them, in anticipation of the affiliation and

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with the confidence that their applications would not be rejected, they had admitted the students. It is also pleaded that when affiliation has in fact been granted for the academic year 2006-2007 and no deficiencies have been pointed out and when the NCTE's recognition for the academic year 2005-2006 is kept in mind, the University ought to have granted affiliation for the academic year 2005-2006. This submission deserves to be rejected. The application for affiliation was made on 12.3.2006. The judgment in Loordhu Ammal's case extracted above clearly shows that the University must be satisfied that the institution seeking affiliation complies with the norms subject to which affiliation is granted and there is no blind or automatic affiliation notwithstanding the words used in the Act "shall grant affiliation". But however, the petitioners did not wait for even this time to lapse before they admitted the students. The Act governing the institutions is clear and categoric that retrospective affiliation cannot be granted. The judgments of the Supreme Court extracted above show that the courts cannot issue a fiat to the University to disobey its own statutes. When that being the position, the mandamus sought for cannot be granted.

18. But there is another question which has to be dealt with in these writ petitions since it is one of the reasons why the University did not grant affiliation and that is, whether the University was correct in insisting that without the copy of the Government Gazette, the application for affiliation cannot be considered. In Loordhu Ammal's case (supra), the Division Bench had clearly referred only to the receipt of the order under Sub-section (4) of Section 14 of the NCTE Act. Paragraph 5 of the said judgment is relevant and is extracted below :

> "In our opinion, when a recognition order of NCTE is produced before the University, the University can make a limited enquiry as to whether the Regional Committee before granting recognition followed the provisions of Section 14(3)(a) of the NCTE Act, which states -
>
> 'On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,
>
> (a) if it is satisfied that such institution has adequate financial resources accommodation, library, qualified staff,
>
> laboratory and that it fulfills such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be

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determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations."

In contrast, in Manonmaniam Sundaranar University's case (supra), it has been indicated that the petitioner is free to make an application for affiliation on getting the order of recognition published in the gazette.

19. While dismissing the review application filed against the judgment in Loordhu Ammal's case (2005 W.L.R. 395) (cited supra) which is reported in 2005 W.L.R. 403 (supra), it was observed that when a recognition order of NCTE is produced before the University, the University can make an enquiry as per Section 14(3)(a) of the NCTE Act. The question there was not really whether the NCTE has to await for the gazette publication or not, but yet the Division Bench has only referred to the recognition order. In Manonmaniam Sundaranar University's case (supra), the learned Judge had directed the University to grant affiliation in a miscellaneous petition, against which the writ appeal was filed. The University, which had not filed a counter in the writ petition, filed an affidavit in the writ appeal stating that the petitioner-College does not have qualified teachers and that the University has acted in accordance with law. It was also submitted that though the college claims that it secured recognition, the said order had not been notified in the gazette till date. It is in this context that the Division Bench directed the petitioner to apply for affiliation on getting the order of recognition duly published in the gazette. Neither the petitioner nor the University in that case had raised the issue as to what would be the effect if the University had received the order granting recognition as per Section 14(4) of the NCTE Act. In the present case, the learned senior counsel appearing for the petitioners specifically poses the question as to whether the University was right in awaiting the gazette notification or insisting upon production of the gazette notification, when the order had been communicated to the University as per Section 14(4) of the NCTE Act.

20. Sub-section (4) of Section 14 makes it clear that the order passed under Sub-section (3) of Section 14 shall be : (i) published in the official gazette, and (ii) communicated in writing for appropriate action. Sub-section (6) merely states that the examining body shall, on receipt of the order under Sub-section (4), grant affiliation to the institution, where recognition has been granted or cancel the affiliation of the institution, where recognition has been refused. Therefore, if the order is communicated by the NCTE to the University, the University, which is

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the examining body, shall consider grant of affiliation, if applied for. There is nothing in the section to indicate that the applicant should produce the copy of the gazette publication. No doubt, the gazette publication is mandatory as per Sub-section (4). It is not necessary for us to import the words not used in the legislation to enlarge or constrict the scope of the provision. Had the Parliament intended that without the production of the gazette publication the examining body shall not consider the grant of affiliation, it would have stated so. But, it has clearly used the words 'on receipt of the order under Sub-section (4)'.

21. In this regard, the decision in 1991 (Supp) 2 S.C.C. 753 [Phagwara Improvement Trust vs. State of Punjab] comes to the aid of such construction. In that case, the Act in question was the Punjab Town Improvement Act, 1922. Section 36 of the said Act required the publication of the notification in the gazette and Section 38 required the notices to be served on the affected persons. In that case, the land owners contended that they could not file their objections until the gazette notification was made. The High Court held that the gazette notification was mandatory and since the publication was not made before the expiry of the period of filing objection, the entire scheme got quashed. It was contended that because of the non-publication before the expiry of the period of filing objection, the valuable right of the respondents had been done away with. The Supreme Court rejected this contention that said that the legislative intent was to afford an opportunity to the owners and occupiers to file their objections against the scheme and against the acquisition and for that purpose, not only notifications in Government Gazette and newspapers were to be published, but also individual notices were required to be served, and the Supreme Court held that it was, therefore, incomprehensible to contend that by not publishing the notification in the Government Gazette, the entire scheme became bad.

22. In the decision relied on by the Division Bench in (2005) 9 S.C.C. 53 [Ramakrishna Vivekananda Mission vs. State of West Bengal] to hold that there has to be strict compliance of the provision regarding publication, the Act in question was the West Bengal Board of Secondary Education Act and the language used therein was different :

> "24. Provisions applicable to making of rules or bye-laws after previous publication.— Where, by any Bengal Act or West Bengal Act, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply namely—

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(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Official Gazette of a rule, or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made."

Therefore, the Supreme Court held that publication as per the rules, the Gazette publication is conclusive proof that the rule or bylaw has been duly made and in those circumstances, held that there has to be strict compliance with the provision regarding the previous publication as it vitally affects the teaching and non-teaching staff, which has a valuable right to object to the special rules when its draft is published. We have already seen that the language of Section 14(4) and 14(6) of the NCTE Act do not appear to indicate that the recognition comes into effect only upon the publication in the Official Gazette, though of course, the publication is mandatory. The order is communicated in writing to the examining body, the institution, the local authority or the State Government and the Central Government, and the examining body, upon receipt of the order, shall take a decision with regard to the grant of affiliation. So, the receipt of the order alone is referred to and not the gazette notification. The University cannot insist upon production of the gazette notification, if the order has been received by them, which is what is mentioned in Sub-section (6) of Section 14.

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23. Though in Manonmaniam Sundaranar University's case (supra), the direction of the Division Bench appears to indicate that without the gazette notification, nothing can be done, this question was not specifically put in issue. Nor was it an issue in Loordhu Ammal's case (supra), where the Division Bench only referred to receipt of the order and not the gazette notification.

24. But, the answer to this question will not change the final decision in these writ petitions. The petitioners had already admitted the students without waiting for the affiliation. So, even if the University is directed to consider the grant of affiliation, it would have to be "retrospective affiliation", which cannot be granted.

25. In several decisions, the manner in which the authorities who are vested with the powers to grant affiliation, recognition, no objection etc. are acting totally out of synchronization with each other has been commented upon. It is not necessary to deal with this issue again. What pains us is the fact that the students suffer in the bargain. This case is another classic example. The NCTE does not adhere to any time frame within which it has to grant recognition. Sometimes, it grants recognition almost at the end of the calendar year for the said calendar year. The institutions which seek affiliation, recognition and no objection do not want to waste any time in seeking affiliation, but however, without getting the order of recognition, they cannot apply for affiliation. Though the recognition by NCTE is for a particular academic year, since it is granted in November or December of that academic year, the institutions cannot hope to get affiliation for the same academic year, but at best, only for the next academic year. These are problems that can be easily resolved by the authorities concerned, so that recognition, affiliation etc. which is granted by the respective authorities in a calendar year is for the current academic year and not for the next academic year.

26. In the present case, the petitioners have knowingly admitted the students for the academic year 2005-2006 without getting the affiliation for the said year. Therefore, the mandamus sought for in the writ petitions cannot be granted. The students who have been admitted for the academic year 2005-2006 cannot suffer. At the same time, the attendance before the grant of affiliation cannot also be taken into account. Therefore, these students shall be treated as a special case and dealt with as if they had been admitted for the academic year 2006-2007 and even if they have written examinations by permission of this Court, their Certificates and Degrees shall be granted only at the end of the

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***academic year 2006-2007,** if they have not taken the examination, they shall be permitted to write in the ensuing examination, but degrees shall be issued as above.

27. With the above directions, the writ petitions are disposed of. However, in the circumstances of the case, each of the petitioners in these writ petitions shall pay a sum of Rs.10,000/- (Rupees ten thousand only) to each of the 100 students admitted in their respective institutions as costs. It is hoped that at least if it pinches their pockets, the institutions will learn the lesson that the students and the parents cannot be trifled with, and the statutory provisions must be adhered to. Consequently, M.P. Nos.1 and 1 in the respective writ petitions are closed.

Sd/-
Asst. Registrar.
28.2.2007

*Corrected order to be issued
Vide order of this Court
dated 6.3.2007 and made herein.

Sd/-
Asst Registrar
7.3.2007 /true copy/

Sub Asst. Registrar.

ab

To

1. The Secretary to Government,
   Higher Education Department,
   Fort St. George, Chennai-9.

2. The Registrar,
   Bharathidasan University,
   Tiruchi-620 024.
   | To be Substituted to the order already despatched on 28.2.2007

3. The Regional Director,
   Southern Regional Committee,
   National Council of Teacher Education,
   HMT Post, Bangalore.

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2 ccs to M/s. K. Soundarajan, Sr. 12127
2 ccs to M/s. Row and Reddy, Sr. 12198

W.P. Nos.45461 & 45462
of 2006

GK (CO)
kk 28/2
SR/7.3.2007

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